

CLAIM CONSTRUCTION HEARING

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1 COURTROOM CLERK: All rise.

2 THE COURT: Please be seated.

3 All right. Ms. Morris, you may call the
4 case.

5 COURTROOM CLERK: The Court calls Case No.
6 6:10-CV-329, Adjustacam versus Amazon.com, et al.

7 THE COURT: Announcements.

8 MR. SPANGLER: Good morning. Andrew
9 Spangler on behalf of the Plaintiff. With me today is
10 Mr. John Edmonds and Mr. Johnathan --

11 MR. YAZDANI: Yazdani.

12 MR. SPANGLER: -- Yazdani, yes. And we're
13 ready, Your Honor.

14 THE COURT: All right. And for the
15 Defendants?

16 MR. CRAFT: Morning, Your Honor, Brian
17 Craft. I'm here on behalf of Amazon.com with Jacqueline
18 Lu, Steve Daniels, here on behalf of Best Buy entities,
19 CDW, Fry's Electronics, Hewlett Packard Company, Micro
20 Electronics, and Office Depot.

21 THE COURT: Okay.

22 MR. HAMMOND: Herbert Hammond on behalf of
23 Gear Head.

24 MR. SMITH: Michael Smith on behalf of
25 Wal-Mart.

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1 to -- is the next thing to do is rotatably attached?

2 MR. ZARIAN: We're prepared to address that,
3 Your Honor.

4 THE COURT: Okay. Mr. Edmonds, have you
5 addressed rotatably attached?

6 MR. EDMONDS: I -- have I addressed theirs?
7 No, I was -- I was responding to hinge member.

8 THE COURT: Go ahead and move to rotatably
9 attached, and that may raise some issues I might have
10 with regard to -- I think they're really, you know, kind
11 of arguing the same thing here, but if there's something
12 specific you want to present on rotatably attached, go
13 ahead.

14 MR. EDMONDS: Yes, Your Honor. I think that
15 the rotatably attached, the difference between the
16 parties is that they're saying it's limited to one axis
17 of rotation, and that's just simply not what the claims
18 say.

19 What the claims require to infringe the
20 claim, you have to have rotatable attachment in one
21 axis, you have to have rotatably attachment in a second
22 axis. That's required to infringe the claim.

23 But what they're saying is that you -- you
24 can only have rotatable attachment in one axis. And
25 there's nowhere that the patent says that. There's

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1 nowhere in the spec, there's nowhere in the claims that
2 say that. So the question is are we going to limit
3 what's claimed here to the preferred embodiment? The
4 preferred embodiment has a pivot joint. The preferred
5 embodiment has a hinge joint on one end, a pivot joint
6 on the other end. Both of those, fair enough, are --
7 are rotating in one axis.

8 But it's -- as Phillips says, you're not
9 limited to the preferred embodiment. And the question
10 of whether somebody is limited to the preferred
11 embodiment, if somebody went around saying, the claimed
12 invention, the claimed invention, this is what the
13 claimed invention is, sometimes that happens, and the
14 Courts say, you know, you just -- you just said
15 that's the claimed invention. That's all you're going
16 to get.

17 That's not how this patent was written.
18 They're referred to as the preferred embodiments, and
19 then, of course, at -- at the end, it made -- to the
20 extent it's not -- it wasn't clear at the end of the
21 patent, the specification says that we're not limited to
22 the preferred embodiment. We're not intending to limit
23 this to the preferred embodiments.

24 And the case law we cited to the Court says
25 exactly that, that if the patentees are not limited to

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1 the preferred embodiment, there has to be a special case
2 in which they be limited to the preferred embodiment.
3 Here they're not, and this is very much on point to the
4 case we cited to the Court. It's very much on point to
5 Phillips for that matter.

6 But I think that's -- that's the issue,
7 and -- and with the webcam we have, I think it
8 illustrates the point. This -- this webcam, as we can
9 see, it rotates in an axis. So what -- what the
10 Plaintiff would say is you have an axis of rotation
11 here, you have another axis of rotation that is
12 perpendicular to it, and we say it infringes.

13 What the Defendants say is maybe it does
14 that, maybe it doesn't, but they say but it also moves
15 in other directions, and because it does more than what
16 the claim requires, it doesn't infringe. The word
17 comprising is including but not limited to.

18 So the only way their argument works is if
19 the claim -- if the Court follows their admonition and
20 restricts the claim to mean that you can only do what --
21 what the claim absolutely requires. You can't do
22 anything else. So, for example, we have a car with head
23 lamps, they'd say, this claim is to a car. If you put
24 head lamps on the car, it doesn't infringe because
25 you're limited to a car.

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1 THE COURT: Okay. All right. Response?

2 MR. ZARIAN: Thank you, Your Honor. A
3 couple of quick points, then I'd like to move to the
4 presentation. But just -- just to distinguish, Your
5 Honor, between the discussion we had about hinge member
6 and rotatably attached, our point with respect to hinge
7 member, and I think the fundamental difference between
8 parties, is that we -- we submit that whatever else the
9 hinge member does, it could have 20 attachments, it's
10 got to have a hinge. There's got to be a hinge on the
11 hinge member, and if it doesn't, it's got to have a
12 hinge member. That's -- that's our construction that
13 we've advanced. It requires a hinge joint. It's as if
14 the claim required head lamps on a car and there were no
15 head lamps. That's where they're taking this claim in
16 terms of an attempt to broaden it.

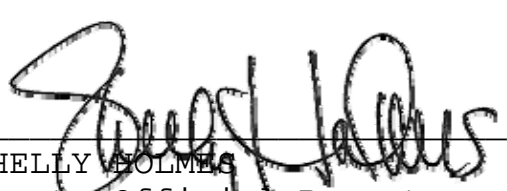
17 The issue with respect to rotatable
18 attachment does turn on -- on the construction -- the
19 difference with the two constructions. Defendants
20 submit that rotation about an axis means rotation about
21 an axis. There must be a single axis. That's all the
22 patent teaches, that's all that's disclosed, and there's
23 no teaching or any suggestion of any kind in terms of
24 these claims and this specification of this patent of
25 anything else.

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.


SHELLY HOLMES
Deputy Official Reporter
State of Texas No.: 7804
Expiration Date: 12/31/12



March 2, 2012

Date

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